

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Original with Affidavit of Mailing

76-1082

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P/S*

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 76-1082

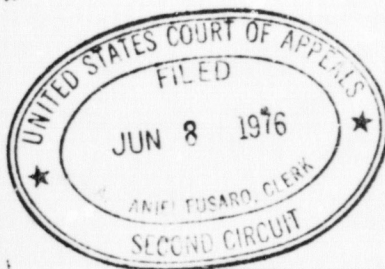
UNITED STATES OF AMERICA

Appellee,

- against -

WILLIE MAE MCGIRTH,

Appellant.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER
United States Attorney,
Eastern District of New York.

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PAGINATION AS IN ORIGINAL COPY

1
2 "Willie Mae McGirth, first being duly sworn, deposes
3 and states:

4 "I have been advised by Postal Inspector
5 F.H. Mullins, in the presence of F. Garifolo,
6 of my constitutional rights. I am aware that I
7 need not make any statement of any kind and that
8 any statement that I do make may be used against
9 me in a court of law. I am also aware that I have
10 a right to have a lawyer present at this interview
11 and if I am unable to afford one, one will be
12 appointed to represent me. Knowing all these
13 things, I give this statement of my own free will
14 without any threats or promises being made.

15 "I, Willie Mae McGirth, am forty-two and
16 born on 3/25/33. I am single, residing at 42-42
17 Caldon Street, Flushing, New York. I have been
18 employed by the post office in L.I.C. since 10/5/68.
19 I am a warehouse clerk at Steinway, Sunnyside and
20 Broadway. My fixed credit at Sunnyside is 1500,
21 my fixed credit at Steinway is 1100, my fixed
22 credit at Broadway is \$875.

23 "Today, April 7, 1975, I was asked by
24 Inspector Mullins about a shortage in my fixed
25 credit at Sunnyside of \$225.52 which was discovered

1 when my credit was counted on April 1st, 1975.

2 I was also asked about a shortage of \$89.63 at
3 the Broadway Station and a shortage of \$155.65
4 at Steinway.
5

6 "The reason I was short at Steinway and
7 Sunnyside was because I knew my stock was going
8 to be checked and since there had been a number
9 of shortages at the station I wanted to make sure
10 what I had taken out was the correct amount missing.
11 I took \$155.65 out of Steinway on March 24th, 1975,
12 placed it in a sealed envelope with the date. I
13 left it in a bag in the ladies' room along with
14 some personal articles I had. I returned the \$155.65
15 on April 7th, 1975 when I found out they had counted
16 my stock. The \$225.00 at Sunnyside was taken on
17 March 26th, 1975, placed in a sealed envelope. I
18 carried it with me since the 26th of March, 1975.
19 I do not know why I am short \$89.53 at the Broadway
20 Station. I had no intention of stealing this money,
21 just to make sure when my stock was checked it would
22 come out to the amount I had put away. The \$155.65
23 has been restored at Steinway Station. I tried to
24 replace the \$225.00. They said I couldn't until I
25 talked to the inspectors.

1 "This two-page statement is the truth."
2

3 Q In the normal course of events, after you have
4 completed the taking of a formal written statement, does that
5 usually terminate the investigation - - terminate the inter-
6 view?

7 A Yes.

8 Q Did this interview terminate at that time?

9 A Yes.

10 Q Can you tell me approximately what time - - do
11 you have any recall what time this interview terminated?

12 A This interview terminated at approximately 1:30 p.m.

13 Q When this interview terminated did there come a
14 time when you continued to talk to Miss McGirth?

15 A As Miss McGirth was leaving the Postmaster's office,
16 she was right about at the door and she removed an envelope
17 from her pocketbook and asked if it was all right to put
18 this money back into her fixed credit at the Sunnyside
19 Station. She said this was the envelope she had been
20 carrying with her since she removed the money on the 26th of
21 March and it contained \$225.00 in change.

22 Q I am going to show you an envelope - -

23 MR. CUNNINGHAM: May I have this marked as
24 Government's Exhibit 3 for identification?

25 THE CLERK: Document marked Government's

1
2 I would also like to state for the record that
3 I did state in the presence of the jury, with regards
4 to the first statement, it would be subject to my motion.
5 I would appreciate the Court ruling on it without my
6 taking a part.

7 (The following transpired in open court.)

8 THE COURT: The Court finds it is admissible
9 under the circumstances.

10 MR. CUNNINGHAM: Thank you, your Honor.

11 THE CLERK: Government's Exhibit 5, previously
12 marked for identification, marked into evidence.

13 (So marked.)

14 Q Could you please read that to the ladies and
15 gentlemen of the jury?

16 A "I, Willie Mae McGirth, being duly sworn, deposes and
17 says:

18 "I have been advised by Postal Inspector E.H. Mullins
19 of my constitutional rights in the presence of F.L.
20 Garifolo. I'm aware that I need not make any statement
21 of any kind and any statement that I do make may be
22 used against me in a court of law. I am also aware
23 that I have a right to a lawyer present at this inter-
24 view and if I am unable to afford one, one will be
25 appointed to represent me. Knowing all these things,

1
2 I give this statement without any threats or
3 promises being made to me.

4 "I, Willie Mae McGirth, am forty-two and
5 born on 3/25/33. I am single and living at 42-42
6 Caldon Street, Flushing, New York. I have been
7 employed by the post office in Long Island City
8 since 10/5/68. I am a window clerk at Steinway,
9 Sunnyside and Broadway. I was asked questions
10 by Inspector Mullins and I gave him statements,
11 but that statement wasn't true. At Sunnyside and
12 Steinway Station and Broadway I took money a little
13 at a time, amount \$85.70. Since this time I have
14 replaced \$155.65 at Steinway and \$120.00 at Sunnyside
15 Stations. I used the money for my personal
16 use.

17 "This two-page statement is the truth to
18 the best of my knowledge."

19 Q Inspector Mullins, after Miss McGirth changed
20 her testimony from the first statement, which is Government's
21 Exhibit 2, do you know whether or not she had occasion to
22 write anything else on the back of Government's Exhibit 2?

23 A Yes, she did.

24 Q I show you Government's Exhibit 2, turning to
25 the reverse side of the second sheet, and I ask you if you

1
2 can identify that.

3 A Yes, this is the statement that Willie Mae McGirth
4 wrote on the back of the first statement after she had
5 completed the second statement.

6 MR. CUNNINGHAM: Your Honor, if it pleases the
7 Court, I would like the original statement marked as
8 Government's Exhibit 2 and the reverse side is
9 Government's Exhibit 2-A. I do not believe there is
10 any opposition from counsel.

11 I move Government's Exhibit 2-A for identifica-
12 tion be received in evidence.

13 THE COURT: Yes.

14 THE CLERK: So marked.

15 (So marked.)

16 Q Would you please read to the Court and the
17 ladies and gentlemen of the jury the reverse side of
18 Government's Exhibit 2?

19 A It says:

20 "This statement was not true. I gave him
21 another statement at 3:00 p.m. The reason I
22 didn't tell Inspector Mullins the truth is because
23 I was afraid that I would be accused of stealing
24 the registry remittance and I didn't steal it."

25 Signed, Willie Mae Girth.

1 first rebuttal witness, Agent Garafalo.

2 THE COURT: You have been previously sworn.

3 F R A N K G A R A F A L O , having previously been
4 duly sworn by the Clerk of the Court, resumes the
5 stand and testifies further on rebuttal as follows:

6 DIRECT EXAMINATION

7 BY MR. CUNNINGHAM:

8 Q I believe you previously testified as to the
9 conducting of an audit of Miss McGirth's cash drawer on
10 April 1st, 1975; is that correct?

11 A That's correct.

12 Q Prior to conducting the audit of Miss McGirth,
13 had you ever conducted other audits?

14 A Yes.

15 Q Approximately how many have you done in the
16 past?

17 A In the four and a half years of being a
18 postal inspector, I have conducted approximately 200 audits.

19 Q Now sir, I am going to show you Government's
20 Exhibits 7, 8, and I believe 6. Turn now to Government's
21 Exhibit 6. I would ask you if you recall doing that audit.

22 A Yes, sir.

23 Q Can you tell us where you did that audit?

24 A At the Sunnyside postal station in Long Island
25 City.

Garafalo-rebuttal direct

1
2 Q While you were doing the audit at the Sunnyside
3 station cash account of the defendant, McGirth, were you
4 doing anything else?

5 A Just the audit.

6 Q How long did it take you to do that audit,
7 if you recall?

8 A I believe this took about an hour to an hour
9 and a half.

10 Q Look at Government's Exhibit 7, do you recall
11 doing that audit?

12 A Yes, I do.

13 Q That was at the Steinway station?

14 A Correct.

15 Q Do you recall how long it took you to do that
16 one?

17 A This one I believe took me about an hour.

18 Q Look at the third one, sir.

19 Would you tell us how long it took you to do
20 that one?

21 A This one took me about an hour and a half.

22 Q When you were conducting this audit, did you
23 have tools that you utilized?

24 A Just a pencil and paper and an adding machine,
25 if it is available.

Garafalo-rebuttal direct

1
2 Q You used an adding machine?

3 A Yes, I could.

4 Q Can you recall sitting there right now actually
5 opening up the cash drawers of the defendant?

6 A I can visualize opening cash drawers out of
7 the safe that they were contained in.

8 Q And looking at the cash drawer and starting
9 to set up your audit?

10 A Yes.

11 Q Can you tell us the condition of the cash
12 drawer, at each one of these stations, or can you give us
13 a general statement as to all three of them?

14 A If I recall correctly the one at Sunnyside
15 had some full sheets and many broken sheets, you know, five,
16 six stamps together, and sometimes one or two stamps.

17 The one at Steinway was basically the same
18 thing.

19 The one at Broadway would be the same thing.

20 Q In your experience in having done over 200
21 audits, would you say this was a complicated audit or a
22 simple audit?

23 A I would consider it an average audit because
24 both postal employees' fixed credit drawers are the same.

25 Q How would you say it was as to order?

Garafalo-rebuttal direct

1
2 A Direct stamps were put into different areas
3 and it was difficult to retrieve those.

4 MR. CUNNINGHAM: Thank you.

5 THE COURT: Do you have anything?

6 MR. CHREIN: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MR. CHREIN:

9 Q Inspector Garafalo, did you make any recording
10 of the amount of time you spent in the conduct of these
11 audits, sir, or are you estimating the time just from a
12 glance or a study of the audit sheets?

13 A I am looking at the audit sheets and at the
14 same time thinking back to that particular day. If you
15 want the specific time I would probably have to refer to
16 my diary. I believe I put the times in as to arriving at
17 the station and leaving the station.

18 Q When you testified today as to the times
19 spent on the witness stand, you were testifying by estimate;
20 is that correct?

21 A Yes.

22 Q Based upon your recollection?

23 A Right.

24 Q This audit took place -- these audits took
25 place in April of this year; is that correct?

6

1

Garafalo-rebuttal cross

2

A Correct.

3

Q Have you conducted any audits since then?

4

A I conducted two or three. I don't recall

5

exactly.

6

Q But in any event this audit took place about

7

seven months ago?

8

A Right.

9

Q Now, you heard Miss McGirth testify ~~that~~

10

envelopes are sometimes grouped in packets of 50; is that

11

correct?

12

A Correct.

13

Q And if you were conducting an audit of a

14

post office employee's drawer, you would want to be as

15

thorough as possible?

16

A Correct.

17

Q You would certainly want to make sure that

18

the post office employee didn't leave a packet saying 50

19

envelopes and slip a few out?

20

A Correct.

21

Q You would count each envelope; is that correct?

22

A I have my own method of counting the

23

envelopes.

24

Q But you would have to count each envelope?

25

A Yes.

7

Garafalo-rebuttal cross

Q You would not be satisfied with seeing a pack that said "50" and be satisfied that there were "50" envelopes there?

A Unless the band was unbroken and was still in the box.

Q You say it is hard to slip an envelope out with the band not broken, but a skilled postal thief could slip an envelope out; is that a fair statement?

A Yes.

Q So you might want to count where a postal employee, doing her own stock, would not want to count?

A Yes.

Q A postal employee doing her own stock might take a little less time making the same count you would, for the reason you would count each envelope whereas the postal employee, seeing a packet of 50 might be satisfied; is that a fair statement?

A No.

Q It is not a fair statement?

Now sir, you were in the courtroom when Miss McGirth testified; is that correct?

A Yes.

Q And you heard her state on some occasions it is easier to make a count because the balance includes less

Garafalo-rebuttal cross

1
2 stamps than at other times?

3 A Yes.

4 Q You have no way of knowing from the examination
5 of these exhibits whether there was a greater degree of
6 stock of stamps on April 1st than there was on let us say
7 March 24th or March 26th?

8 A No, I wouldn't be able to do that. I would
9 not be able to tell you on March 24th or March 26th what
10 the stamp stock would be as compared to the cash amount.

11 Q So it is reasonable to state -- one cannot
12 state whether there was less stamps on March 26 and a greater
13 amount of cash?

14 A No.

15 Q You can't determine that at all?

16 A No.

17 Q It is easier to count cash than postage
18 stamps, even with sheets?

19 A Yes.

20 Q Now sir, calling your attention to the
21 Sunnyside audit -- by the way on April 1st, what was the
22 rate for an ordinary post card?

23 A I believe it was 8¢.

24 Q Would I be fair in stating there would be
25 more traffic in 8¢ post cards than some other denomination

Garafalo-rebuttal cross

post card?

A Yes.

Q How many 8¢ post ards did you count in Miss McGirth's stock?

A 47 --

Q 47?

A I am sorry --

Q You said you counted 47 units of some --

A That was the 12¢.

Q What were those?

A Those are envelopes.

Q How many different types, I am speaking about the Sunnyside audit, postal paper were there on that occasion?

A As far as envelopes --

Q And post cards?

A Two.

Q Two different types?

A Yes.

MR. CHREIN: I have no further questions.

THE COURT: All right, you may step down.

Is that it?

MR. CUNNINGHAM: Yes, your Honor.

THE COURT: The Government rests?

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

ELIA WEINBACH

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 7th day of June 1976 he served ^{two copies} ~~xxx~~ copy of the within Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

William J. Gallagher, Esq.
Federal Defender Services Unit
The Legal Aid Society
509 U. S. Courthouse
Foley Square, New York, N. Y. 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Elia Weinbach
ELIA WEINBACH

Sworn to before me this

7th day of June 1976

Carolyn N. Johnson
CAROLYN N. JOHNSON
NOTARY PUBLIC State of New York
No. 41-618298
Qualified in Queens County,
Term Expires March 30, 1977